

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement  
Bakersfield Federal Courthouse  
510 19<sup>th</sup> Street, Second Floor  
Bakersfield, California

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** MARCH 2, 2016  
**CALENDAR:** 10:00 A.M. CHAPTER 7 CASES

**GENERAL DESIGNATIONS**

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

**ORAL ARGUMENT**

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

**COURT'S ERRORS IN FINAL RULINGS**

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [14-14714](#)-A-7 BRYAN GRAY  
NES-1  
BRYAN GRAY/MV  
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT  
1-14-16 [[14](#)]

### **Tentative Ruling**

**Motion:** Compel Abandonment of Property of the Estate

**Disposition:** Denied without prejudice

**Order:** Civil minute order

### **INSUFFICIENT TRANSMISSION OF NOTICE**

Rule 6007(a) expressly requires a trustee or debtor in possession to provide notice of a proposed abandonment to all creditors, indenture trustees, and any committees. But Rule 6007(b) does not specifically state who must receive notice of a motion to abandon property of the estate. See Fed. R. Bankr. P. 6007(a)-(b). But a motion under Rule 6007(b) seeks an order to compel the trustee to abandon property of the estate, the same action that is described in Rule 6007(a) and for which notice to creditors is required.

Because a motion under Rule 6007(b) requests a type of relief that requires notice to all creditors and parties in interest under Rule 6007(a), the same notice required by Rule 6007(a) should be required when a party in interest seeks to compel the trustee to take such an action under Rule 6007(b). See *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705, 709-10 (9th Cir. 1986) (finding that a trustee's abandonment would not be effective without notice to creditors); *Hie of Effingham, LLC v. WBCMT 2007-C33 Mid America Lodging, LLC (In re Hie of Effingham, LLC)*, 490 B.R. 800, 807-08 (Bankr. S.D. Ill. 2013) (concluding that Rule 6007(b) incorporates service requirements of Rule 6007(a)); *In re Jandous Elec. Constr. Corp.*, 96 B.R. 462, 464-65 (Bankr. S.D.N.Y. 1989) (finding that parties in interest requesting abandonment of estate property for which a hearing is contemplated must provide notice to the parties listed in Rule 6007(a)).

Accordingly, the court requires all creditors and parties in interest described in Rule 6007(a), and the trustee pursuant to Rule 9014(a), to be provided notice of a motion requesting abandonment under Rule 6007(b). In this case, all creditors and parties in interest described in Rule 6007(a) and Rule 9014(a) have not received notice of the motion. The court will deny the motion without prejudice for lack of sufficient notice.

For matters requiring notice to all creditors and parties in interest, the court prefers that a current copy of the ECF master address list, accessible through PACER, be attached to the certificate of service to indicate that notice has been transmitted to all creditors and parties in interest. The copy of the master address list should indicate a date near in time to the date of service of the notice. In addition, governmental creditors must be noticed at the address provided on the Roster of Governmental Agencies, Form EDC 2-785, so the master address list and schedule of creditors must be completed using the correct addresses shown on such roster. See Fed. R. Bankr. P. 2002(j), 5003(e); LBR 2002-1.

## CONTENT OF NOTICE

The content of the notice misinforms its recipients of the nature of the matter being noticed. It states as follows: "This notice is being filed and served under 11 U.S.C. sections 330, 331, 502 and 503, Federal Rules of bankruptcy [sic] Procedure 2002, and the Local bankruptcy [sic] Rules . . . ." These statutes suggest that the hearing on the underlying matter will deal with substantive matters such as compensation, claims in bankruptcy, or administrative expenses. The title of the notice refers to a motion to compel abandonment, which does not relate to the Code sections cited. Nothing in the notice's content summarizes the relief requested in plain language, and nothing in it states what asset specifically is to be abandoned.

## CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

The debtor's motion to compel abandonment has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

2. <a href="#">15-14214</a> -A-7    MAKAYLA JACOBS NLG-1 SETERUS, INC./MV ROBERT WILLIAMS/Atty. for dbt. NICHOLE GLOWIN/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 2-3-16 [ <a href="#">9</a> ]
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## Final Ruling

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 40025 West Tamara Lane, Maricopa AZ

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

## STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the

estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Seterus, Inc., authorized subservicer for Federal National Mortgage Association, has filed a motion for relief from the automatic stay which has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 40025 West Tamara Lane, Maricopa AZ, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

3. [10-10718](#)-A-7      GUILLERMO/ROSALVA GUILLEN      MOTION TO AVOID LIEN OF  
RSW-3      FINANCIAL CREDIT NETWORK, INC.  
GUILLERMO GUILLEN/MV      1-28-16 [[25](#)]  
SUSAN SALEHI/Atty. for dbt.  
RESPONSIVE PLEADING

#### **Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption in Real Property

**Notice:** Written opposition filed by responding party

**Disposition:** Continued to April 6, 2016, at 10:00 a.m.

**Order:** Civil minute order

The motion seeks to avoid the responding party's lien on the moving party's real property. The motion is opposed by the respondent creditor.

#### **PROPOSED NEXT STEPS**

The court would like to propose next steps in resolving this matter. The court will continue the hearing for approximately 30 days. In the interim period before the next hearing, the parties may obtain competent and admissible evidence of the property's value.

A joint status report will be filed by a date certain before the next hearing date.

If the parties have not resolved their dispute about the real property's value by the next hearing date, then the court will hold a scheduling conference on that date for the purpose of setting an evidentiary hearing (including all relevant dates and deadlines) under Federal Rule of Bankruptcy Procedure 9014(d). An evidentiary hearing would be required because the disputed, material factual issue of the real property's value must be resolved before the court can rule on the relief requested.

#### **MEET AND CONFER**

Not later than March 9, 2016, at 5:00 p.m., the parties are invited to meet and confer (by telephone or email). After this conference between the parties, the parties should discuss and consider each other's evidence of value and decide whether the matter can be resolved by agreement.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED THAT the hearing is continued to April 6, 2016, at 10:00 a.m. The parties may meet and confer on or before March 9, 2016, at 5:00 p.m.

IT IS FURTHER ORDERED THAT a joint status report shall be filed no later than March 25, 2016, indicating whether the parties (1) have met and conferred, (2) have resolved the matter by agreement, and (3) have decided that an evidentiary hearing is necessary.

4. [10-10718](#)-A-7      GUILLERMO/ROSALVA GUILLEN      MOTION TO AVOID LIEN OF  
RSW-4      FINANCIAL CREDIT NETWORK, INC.  
GUILLERMO GUILLEN/MV      2-17-16 [[36](#)]  
SUSAN SALEHI/Atty. for dbt.

#### **Tentative Ruling**

This motion is duplicative of the motion to avoid lien, having docket control number RSW-3. The court will drop this matter, RSW-4, from calendar as duplicative.

5. [15-14024](#)-A-7 DAVID/SHERRI OZUNA  
JMV-2  
JEFFREY VETTER/MV  
JERRY LOWE/Atty. for dbt.

MOTION TO SELL  
2-2-16 [[28](#)]

**Final Ruling**

**Motion:** Sell Property and Compensate Auctioneer

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2005 Open Road by Pilgrim International 5th Wheel

**Sale Type:** Public auction

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55(c), *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

6. [16-10232](#)-A-7 STEVE/SILVIA RIVERA

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-11-16 [[15](#)]

WILLIAM EDWARDS/Atty. for dbt.  
\$335.00 FILING FEE PAID  
2/11/16

**Final Ruling**

The fee paid, the order to show cause is discharged and the case shall remain pending.

7. [15-11835](#)-A-7 JAMES/JAMIE CANNON  
RSW-2  
JAMES CANNON/MV

MOTION TO AUTHORIZE DEBTORS TO  
PROSECUTE OBJECTIONS TO PROOFS  
OF CLAIMS  
2-17-16 [[357](#)]

ROBERT WILLIAMS/Atty. for dbt.

### **Tentative Ruling**

**Motion:** Authorize Debtors to Prosecute Objections to Proofs of Claims

**Notice:** LBR 9014-1(f)(2); no written opposition required

**Disposition:** Continued to April 6, 2016, at 10:00 a.m.

**Order:** Civil minute order

The debtors lack standing unless they can show that the outcome of the claim objection affects the debtor in some way. See *Dellamarggio ex rel. Barker v. B-Line, LLC (In re Barker)*, 306 B.R. 339, 346-47 (Bankr. E.D. Cal. 2004). "This [standing] requirement is satisfied by cognizable prospects of receiving a distribution or of a nondischargeable debt being affected." *Gilliam v. Speier (In re KRSM Props., LLC)*, 318 B.R. 712, 716 n.3 (B.A.P. 9th Cir. 2004); see also Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 17:1362 (rev. 2012) (standing conferred by existence of surplus estate or an outcome that would affect a nondischargeable debt).

In the motion, the chapter 7 debtors have not shown that there will be a surplus distribution. See *An-Tze Cheng v. K & S Diversified Invs., Inc. (In re An-Tze Cheng)*, 308 B.R. 448, 454 (B.A.P. 9th Cir. 2004) (placing burden on objecting party to demonstrate standing), *aff'd*, 160 F. App'x 644 (9th Cir. 2005).

### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the hearing on the motion is continued to April 6, 2016, at 10:00 a.m. The debtors may file appropriate evidence indicating that they have standing to file objections. Such evidence may be filed no later than March 22, 2016. To support the relief requested, the evidence must (i) be consistent with the schedules or amended schedules on file, (2) include a reliable estimate of administrative expenses in this case, (3) exclude any property abandoned or to be abandoned by a motion pending before this court, and (4) describe with particularity the relevant figures from which the court can conclude the debtors have a cognizable prospect of receiving a distribution.

8. [15-11835](#)-A-7 JAMES/JAMIE CANNON OBJECTION TO CLAIM OF TOBY  
RSW-3 CURTIS, CLAIM NUMBER 12  
JAMES CANNON/MV 2-17-16 [[360](#)]  
ROBERT WILLIAMS/Atty. for dbt.

**Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b) (2); no written opposition required

**Disposition:** Overruled

**Order:** Civil minute order

Debtors James and Jamie Cannon object to the allowance of Claim No. 12 filed in this case. The period of notice given was insufficient. Federal Rule of Bankruptcy Procedure 3007 requires no less than 30 days' notice of an objection to claim. LBR 3007-1(b) also governs the procedure for filing objections to claims. In this case, only 14 days' notice was provided to the respondent claimant.

9. [15-11835](#)-A-7 JAMES/JAMIE CANNON OBJECTION TO CLAIM OF TOBY  
RSW-4 CURTIS, CLAIM NUMBER 13  
JAMES CANNON/MV 2-17-16 [[363](#)]  
ROBERT WILLIAMS/Atty. for dbt.

**Tentative Ruling**

**Objection:** Objection to Claim

**Notice:** LBR 3007-1(b) (2); no written opposition required

**Disposition:** Overruled

**Order:** Civil minute order

Debtors James and Jamie Cannon object to the allowance of Claim No. 12 filed in this case. The period of notice given was insufficient. Federal Rule of Bankruptcy Procedure 3007 requires no less than 30 days' notice of an objection to claim. LBR 3007-1(b) also governs the procedure for filing objections to claims. In this case, only 14 days' notice was provided to the respondent claimant.

10. [15-11835](#)-A-7 JAMES/JAMIE CANNON MOTION TO COMPEL ABANDONMENT  
RSW-5 2-17-16 [[366](#)]  
JAMES CANNON/MV  
ROBERT WILLIAMS/Atty. for dbt.

**Tentative Ruling**

**Motion:** Abandon Real and Personal Property

**Notice:** LBR 9014-1(f) (2); no written opposition required

**Disposition:** Continued to April 6, 2016, at 10:00 a.m.

**Order:** Not applicable

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). The default



of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The motion does not state specific facts supporting the relief sought. A list of real and personal property is given along with a conclusory statement that all of such property is either exempt or burdensome to the estate or of inconsequential value to the estate. This does not suffice to warrant relief.

The court will not grant the relief sought as to any asset to be abandoned without specific factual representations showing (1) the asset's value, (2) the amount of debt secured by such asset (lien amounts), and (3) any claims of exemption in the asset, and (4) the net value. Attorneys often use a tabular format when multiple assets are at issue, and the court prefers this approach.

11. [10-11054](#)-A-7 RONALD/SUSAN SMITH  
KDG-5

CONTINUED MOTION FOR  
COMPENSATION BY THE LAW OFFICE  
OF KLEIN, DENATALE, GOLDNER,  
COOPER, ROSENLIB AND KIMBALL,  
LLP FOR LISA HOLDER, TRUSTEES  
ATTORNEY(S)  
9-1-15 [[84](#)]

NEIL SCHWARTZ/Atty. for dbt.  
RESPONSIVE PLEADING, MOTION  
WITHDRAWN

#### **Final Ruling**

At the request of the applicant, the application is withdrawn without prejudice.

12. [14-10458](#)-A-7 ERNIE MARTINEZ CONCRETE,  
JMV-1 INC.  
JEFFREY VETTER/MV

MOTION FOR COMPENSATION FOR  
JEFFREY M. VETTER, CHAPTER 7  
TRUSTEE(S)  
2-2-16 [[67](#)]

LEONARD WELSH/Atty. for dbt.  
D. GARDNER/Atty. for mv.

#### **Final Ruling**

**Application:** Allowance of Compensation and Expense Reimbursement

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Approved

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true.

*TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

#### **COMPENSATION AND EXPENSES**

In this Chapter 7 case, the trustee has applied for an allowance of compensation and reimbursement of expenses. The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that no extraordinary circumstances are present in this case, see *In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012); and (3) that expenses for which reimbursement is sought are actual and necessary. The court approves the application and allows compensation in the amount of \$3,391.00 and reimbursement of expenses in the amount of \$280.83.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Jeffrey M. Vetter's application for allowance of compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows to the trustee compensation in the amount of \$3,391.00 and reimbursement of expenses in the amount of \$280.83.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

13. [15-14666](#)-A-7 ISRAEL/DIANA PENA  
KAZ-1  
THE BANK OF NEW YORK MELLON/MV  
PATRICK KAVANAGH/Atty. for dbt.  
KRISTIN ZILBERSTEIN/Atty. for mv.  
RESPONSIVE PLEADING

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
12-15-15 [[13](#)]

### **Tentative Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(1); written opposition filed by debtors

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 3435 Moss Street, Bakersfield, CA

### **OPPOSITION BY DEBTORS**

The debtors oppose the motion on the ground that the notice does not comply with LBR 9014(d)(3). Specifically, the debtors point to the notice's incorrect address for the hearing.

Although the debtors are correct that the court address for the hearing is incorrect, the court will not deny the motion on this basis. Federal Rule of Civil Procedure 61 provides that "[a]t every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights." Fed. R. Civ. P. 61, *incorporated by* Fed. R. Bankr. P. 9005.

The incorrect notice does not affect the debtors' substantial rights as they are the ones who raise the issue about the inaccuracy. The debtors' attorney has had time to file an opposition as of January 20, 2016, which shows that he and the debtors received adequate notice of the hearing. Further, the court infers that the debtors and their attorney knew of the correct court address at least as of January 20, 2016. No party's substantial rights could be affected by the error. The court will thus disregard it.

### **STAY RELIEF**

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The Bank of New York Mellon, as Trustee for CIT Mortgage Loan Trust 2007-1, through Caliber Home Loans, Inc., has filed a motion for relief from the automatic stay. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 3435 Moss Street, Bakersfield, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

14. [15-13971](#)-A-7 ALICE WILLIAMS  
UST-1  
TRACY DAVIS/MV

MOTION TO EXTEND TIME TO FILE A  
MOTION TO DISMISS CASE UNDER  
SEC. 707(B) AND/OR MOTION TO  
EXTEND DEADLINE TO FILE A  
COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR  
1-28-16 [[15](#)]

WILLIAM EDWARDS/Atty. for dbt.  
ROBIN TUBESING/Atty. for mv.

### **Final Ruling**

**Motion:** Extend U.S. Trustee and Chapter 7 Trustee's Deadlines to Object to Discharge or File a Motion to Dismiss

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **EXTENSION OF DEADLINE FOR OBJECTING TO DISCHARGE**

A party in interest may bring a motion for an extension of the deadline for objecting to discharge under § 727, but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4004(b). The deadline may be extended for "cause." *Id.*

Based on the motion and supporting papers, the court finds that cause exists to extend the U.S. Trustee and the trustee's deadline for

objecting to discharge under § 727(a). This deadline to object to discharge will be extended through April 1, 2016.

#### **EXTENSION OF DEADLINE FOR FILING MOTION TO DISMISS**

Under Rule 1017(e)(1), a motion to dismiss a chapter 7 case for abuse under § 707(b) and (c) must be filed within 60 days after the first date set for the § 341(a) creditors' meeting. Fed. R. Bankr. P. 1017(e)(1). The court may extend this period for cause if the request for such extension is made before the original period expires. The deadline will be extended through July 3, 2014.

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for the trustee and the U.S. Trustee to file a motion to dismiss under § 707(b) and (c). This deadline to file a motion to dismiss will be extended through April 1, 2016.

15. [15-14579](#)-A-7     ARTURO PADILLA     MOTION FOR RELIEF FROM  
JHW-1     AUTOMATIC STAY  
TD AUTO FINANCE LLC/MV     1-20-16 [[15](#)]  
R. BELL/Atty. for dbt.  
JENNIFER WANG/Atty. for mv.  
WITHDRAWN

#### **Final Ruling**

The motion withdrawn, the matter is dropped as moot.

16. [15-13991](#)-A-7     JERAD/ALICE SANDERS     MOTION FOR RELIEF FROM  
NEA-1     AUTOMATIC STAY  
DELANO VINE VALLEY/MV     1-22-16 [[27](#)]  
VINCENT GORSKI/Atty. for dbt.  
NICHOLAS ANIOTZBEHERE/Atty. for mv.  
RESPONSIVE PLEADING

#### **Tentative Ruling**

**Motion:** Stay Relief

**Notice:** Written opposition filed

**Disposition:** Denied as moot

**Order:** Civil minute order

#### **FACTS**

The movant, Delano Vine Valley, requests relief from the automatic stay as to 2 real properties: (1) 32177 Woollomes Avenue, Delano, CA (the "Woollomes property") and (2) 5805 Grandifloras Drive, Bakersfield, CA (the "Grandifloras property"). The movant has asserted that it holds a judicial lien against these properties based on a stipulated judgment in the amount of \$935,796.44. The abstract of judgment was recorded on September 16, 2013. A true and correct copy of the judgment abstract that was recorded is attached as Exhibit 1. The abstract of judgment attached as an exhibit reveals that it was issued July 13, 2013, and is in favor of judgment creditor Delano

Vine Valley, Inc. and against judgment debtors Jerad Sanders and Alice Sanders.

The movant presents two other exhibits. Exhibit 2 is a copy of the quitclaim deed transferring the Woollomes property from the Alice M. Sanders Separate Property Trust dated June 9, 2004, to a third party, Antoinette Buska. This transfer is dated December 17, 2013.

Exhibit 3 is a copy of another quit claim deed, which transfers the Grandifloras Drive property from the Blue Shore Trust (with debtors as trustees) to Antoinette Buska. This transfer is dated December 13, 2013. Both transfers occurred in December 2013. This bankruptcy case was commenced on October 12, 2015. Fed. R. Evid. 201.

No party has raised a dispute regarding the authenticity or admissibility of these documents.

## **ANALYSIS**

### Scope of the Stay

The automatic stay protects the debtor, the debtor's property and property of the estate. See 11 U.S.C. § 362(a), (c). These properties are currently held by Antoinette Buska. Before she held the properties, each was held by a different trust. These properties are not property of the debtor or the estate.

Although no pending avoidance action has been identified to recover the Grandifloras and Woollomes properties, the mere existence of such pending actions would not bring the subject property into the estate. The Tenth Circuit has held that estate property does not include property that can be recovered under the trustee's avoiding powers *until* that property is recovered. See *Rajala v. Gardner*, 709 F.3d 1031, 1039 (10th Cir. 2013) ("fraudulently transferred property is not part of the bankruptcy estate *until* recovered."). A circuit split on the issue exists however. See *In re Allen*, 768 F.3d 274, 281-82 (3d Cir. 2014) (discussing split between Tenth and Second Circuits on the one hand and the Fifth Circuit on the other as to whether property not yet recovered under the trustee's avoiding powers is property of the estate under § 541(a)(3)).

Because these properties are plainly not property of the estate, or property of the debtors, the automatic stay does not apply to them. This fact would be true even if the trustee had filed an avoidance action but had not yet recovered them.

### Mootness

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

"[A] case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *City of Erie v. Pap's A.M.*, 529 U.S. 277, 287 (2000) (alteration in original)

(quoting *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979)) (internal quotation marks omitted). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." *Nw. Envtl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir. 1988) (citing *United States v. Geophysical Corp.*, 732 F.2d 693, 698 (9th Cir.1984)).

Because the stay does not apply to the Grandifloras and Woollomes properties, the court is incapable of granting effective relief. The movant does not have a legally cognizable interest in obtaining such relief. The motion will be denied as moot.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Delano Vine Valley, Inc.'s motion for relief from the automatic stay as to (1) 32177 Woollomes Avenue, Delano, CA (the "Woollomes property") and (2) 5805 Grandifloras Drive, Bakersfield, CA (the "Grandifloras property") has been presented to the court. Having reviewed the papers and evidence filed in support and opposition to the motion and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied as moot because the automatic stay does not apply to the Woollomes property or the Grandifloras property.

17.	<a href="#">15-13592</a> -A-7	VICTORIANO/HILARIA	AMENDED MOTION TO SELL
	JMV-1	MORALES	2-8-16 [ <a href="#">18</a> ]
	JEFFREY VETTER/MV		
	D. GARDNER/Atty. for dbt.		
	JEFFREY VETTER/Atty. for mv.		

#### **Tentative Ruling**

**Motion:** Sell Property

**Notice:** LBR 9014-1(f) (2); no written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 2012 Chevrolet Malibu

**Buyer:** Debtors

**Sale Price:** \$8,712.50 (\$5812.50 cash plus \$2900 exemption credit)

**Sale Type:** Private sale subject to overbid opportunity

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 363(b) (1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b) (1); see also *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir.

1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. See 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

18. [15-14795](#)-A-7 BRIAN SHAFER  
APN-1  
WELLS FARGO BANK, N.A./MV  
CURTIS FLOYD/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-2-16 [[16](#)]

### **Final Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **STAY RELIEF**

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

The debtor has missed 1 post-petition payment due on the debt secured by the moving party's lien. The debtor has also not opposed the relief sought. This constitutes cause for stay relief.

The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially



to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Wells Fargo Bank, N.A.'s motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2013 Toyota Tundra, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.